

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA, :  
: 12-CR-00171 (ADS)  
:  
v. : 100 Federal Plaza  
: Central Islip, New York  
ROLAND STERN, :  
: October 18, 2012  
Defendant. :  
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA  
BEFORE THE HONORABLE GARY R. BROWN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: CHARLES N. ROSE, ESQ.  
United States Attorneys Office  
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Central Islip, New York 11722

For the Defendant: STEVEN LOSQUADRO, ESQ.  
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Proceedings recorded by electronic sound recording, transcript  
produced by transcription service

1 (Proceedings began at 2:43 p.m.)

2 THE CLERK: Calling criminal case 2012-171, United  
3 States of America v. Roland Stern.

4 Counsel, please state your appearances for the  
5 record.

6 MR. ROSE: Assistant United States Attorney Charlie  
7 Rose. Good afternoon, Your Honor.

8 THE COURT: Good afternoon. Good to see you, sir.

9 MR. LOSQUADRO: Your Honor, good afternoon. Steven  
10 Losquadro on behalf of Mr. Stern.

11 THE COURT: Mr. Losquadro, good to see you. Mr.  
12 Stern, good to see you as well.

13 THE DEFENDANT: Thank you, sir.

14 THE COURT: Sir, you may recall my name is Magistrate  
15 Judge Brown. I'm a magistrate judge. Judge Spatt is a judge  
16 assigned to your case.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But he's asked me to take a plea this  
19 afternoon because he's on a trial. You have the right to have  
20 your plea heard before him but you can consent and I believe  
21 you've signed the consent indicating that you're going to plea  
22 before me. Is that okay with you, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you understand all of that; right?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: And you've had enough time to talk to  
2 your lawyer; correct?

3           THE DEFENDANT: Yes, sir.

4           THE COURT: All right. I have the signed agreement  
5 here. Any changes to the -- from the draft?

6           MR. ROSE: Just the date for early acceptance was  
7 changed to today's date, Your Honor.

8           THE COURT: Got it. All right. Very good.

9           Mr. Stern, before recommending acceptance of your  
10 plea there are a number of questions I must ask to assure  
11 myself that it is a valid plea. If you don't understand any  
12 of my questions please say so. If you can't hear me you let  
13 me know. I'll repeat or rephrase the question. Okay?

14          THE DEFENDANT: Yes.

15          THE COURT: Please swear the defendant, please.

16 (AT THIS TIME, THE DEFENDANT, ROLAND STERN, WAS SWORN.)

17          THE CLERK: Please state your name for the record.

18          THE COURT: Have a seat.

19          THE DEFENDANT: Roland Stern.

20          THE COURT: Mr. Stern, do you understand that having  
21 been sworn anything you say today that's not true would be  
22 subject to a potential charge of making a false statement or  
23 committing perjury which is a separate crime? Do you  
24 understand that, sir?

25          THE DEFENDANT: Yes, sir.

1 THE COURT: How old are you, sir?

2 THE DEFENDANT: 68.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: Four years of college.

5 THE COURT: Are you presently or have you recently  
6 been under the care of a physician or a psychiatrist?

7 THE DEFENDANT: Two physicians.

8 THE COURT: For what, sir?

9 THE DEFENDANT: One -- well, both of them for my  
10 heart.

11 THE COURT: Okay. Are you on any kind of medication?

12 THE DEFENDANT: Yes.

13 THE COURT: What kind of medication?

14 THE DEFENDANT: I got a list of them. Amiodarone --  
15 well, I have a defibrillator. That's the one doctor that I go  
16 to. My other doctor is -- he's a -- not a heart specialist  
17 but he takes care of my medication. I'm on -- I have a list  
18 of them but --

19 THE COURT: Well, let me start with the most  
20 important fact. Are there any of them that impair your  
21 ability to think or to understand what's going on?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. Other than the drugs you were just  
24 discussing, in other words the cardiac related drugs have you  
25 taken any other drugs, pills, medication, anything else in the

1 last 24 hours?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had any alcoholic beverages in  
4 the last 24 hours?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. Have you been hospitalized in the  
7 past for narcotics addiction?

8 THE DEFENDANT: For what, sir? I'm sorry.

9 THE COURT: For narcotics.

10 THE DEFENDANT: No, sir. No.

11 THE COURT: How about alcohol addiction?

12 THE DEFENDANT: No, sir.

13 THE COURT: Is your mind clear today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand what's going on here?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you know why we're here and what  
18 we're planning on doing?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Let me ask your attorney. Have you  
21 discussed the matter with your client?

22 MR. LOSQUADRO: Your Honor, I have.

23 THE COURT: Does he understand the rights that he may  
24 be waiving today if he pleads guilty?

25 MR. LOSQUADRO: In my estimation he does.

1           THE COURT: Is he capable of understanding the nature  
2 of the proceedings?

3           MR. LOSQUADRO: Yes, sir.

4           THE COURT: Any doubt as to his competency to plead?

5           MR. LOSQUADRO: None whatsoever.

6           THE COURT: Thank you.

7           Sir, let me start off by telling you you have the  
8 right to plead not guilty. As you have before you could  
9 maintain that not guilty plea. Do you understand that?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: If you plead not guilty under the  
12 constitution and laws of the United States, you are entitled  
13 to a speedy and public trial by jury with the assistance of  
14 your lawyer on the charges. Do you understand that?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: At the trial, you'd be presumed to be  
17 innocent and the Government would have to overcome that  
18 presumption and prove you guilty by competent evidence and  
19 beyond a reasonable doubt and you would not have to prove that  
20 you are innocent. And if the Government failed, the jury  
21 would have the duty and responsibility of finding you not  
22 guilty. Do you understand?

23          THE DEFENDANT: Yes, sir.

24          THE COURT: In the course of the trial, witnesses  
25 for the Government would have to come to court and testify in

1 your presence and your counsel has the right to cross-examine  
2 the witnesses for the Government, to object to the evidence  
3 offered by the Government and offer evidence on your behalf.  
4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: At the trial while you would have the  
7 right to testify if you chose to do so, you would not be  
8 required to testify. Under the Constitution of the United  
9 States, you may not be compelled to incriminate yourself. If  
10 you decided not to testify, the court Spatt would instruct the  
11 jury that they may not hold that against you. Do you  
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you plead guilty and I recommend  
15 acceptance of the plea and Judge Spatt accepts that plea, you  
16 will be giving up your constitutional rights to a trial and  
17 the other rights I just discussed. There will be no further  
18 trial of any kind and no right to an appeal as to whether  
19 you're guilty or not. The court will simply enter a judgment  
20 of guilty on the basis of your guilty plea. You may have the  
21 right to appeal with respect to the sentence but as to guilt  
22 or innocence this is it. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Let me go to the Government for a second.  
25 What is the appellate waiver if you may?

1 MR. ROSE: Your Honor, as provided in the Plea  
2 Agreement which I believe is before the court, the defendant  
3 agrees to waive his right to appeal if he's sentenced to a  
4 term of imprisonment of 121 months or less.

5 THE COURT: So, sir, just to be clear. You might  
6 have the right to appeal if you were sentenced to more than  
7 121 months.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: But if you're sentenced to less than  
10 that, no right to appeal at all, and even if you're sentenced  
11 to more than 121 months the only thing that goes on appeal is  
12 the sentence, not whether or not you did it. Do you  
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: If you plead guilty I have to ask you  
16 questions about what you did in order to satisfy myself that  
17 you're guilty of the charges to which you seek to plead guilty  
18 and you will have to answer questions and acknowledge your  
19 guilt. Thus, you will be giving up your right not to  
20 incriminate yourself. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you willing to give up your right to  
23 a trial and the other rights I've just discussed?

24 THE DEFENDANT: Yes.

25 THE COURT: Let's talk a little bit about the



1 agreement. You have a Plea Agreement with the Government  
2 which I believe is before me and you signed that agreement  
3 here, sir; yes?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Before you signed it, did you read it?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you understand it?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you have an opportunity to talk to  
10 your attorney about it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you ask him questions and you got all  
13 those questions answered?

14 THE DEFENDANT: I think I asked him one question,  
15 yes, and I got the answer.

16 THE COURT: Do you have other questions now you'd  
17 like to either ask him or ask me about the agreement?

18 THE DEFENDANT: No, sir.

19 THE COURT: Mr. Rose, do me a favor, just outline the  
20 agreement if you would.

21 MR. ROSE: Certainly, Your Honor. The defendant will  
22 plead guilty to a lesser included count of the indictment.  
23 The Plea Agreement, the terms of that count would be a maximum  
24 term of imprisonment of 20 years. There's no minimum term.  
25 The minimum supervised release term of three years, a maximum

1 supervised release term of life to follow any term of  
2 imprisonment. If a condition of release is violated the  
3 defendant may be sentenced to up to two years without credit  
4 for presentence -- prerelease imprisonment or time previously  
5 served on post release supervision. There's a maximum fine of  
6 \$1 million. Restitution is not applicable, and there's a  
7 \$100.00 special assessment.

8           The defendant agrees in the agreement to waive  
9 rights to appeal if he's sentenced to 121 months or below. He  
10 agrees not to challenge drug type or quantity set forth in the  
11 lab reports.

12           The defendant also agrees to waive all defenses  
13 based on the statute of limitations and venue with respect to  
14 any prosecution that is not time barred on the date that this  
15 agreement is signed which is today. In the event that the  
16 defendant's conviction is later vacated for any reason, the  
17 defendant violates this agreement or the defendant's plea is  
18 later withdraw the defendant waives any right to additional  
19 disclosure from the Government.

20           The defendant also agrees that he's not a prevailing  
21 party under the Hyde Amendment. In exchange the office agrees  
22 that it would not bring any further criminal charges for the  
23 conduct that's described in Paragraph 5 and based upon  
24 information now known to the office it will take no position  
25 concerning where within the guidelines range the sentence

1 should fall or make a motion for an upward departure under the  
2 sentencing guidelines.

3 THE COURT: Mr. Stern, we're going to talk about this  
4 a little bit more but as an overview, do you understand what  
5 Mr. Rose just said?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Rose, while I have you, could you  
8 just lay out the elements of the crime with which the  
9 defendant is charged, please?

10 MR. ROSE: Certainly, Your Honor. The defendant is  
11 charged in the indictment as it's on the lesser included  
12 charge that in or about and between February 1, 2009 and March  
13 7, 2012, those dates being approximate and inclusive, within  
14 the Eastern District of New York and elsewhere the defendant  
15 conspired knowingly and intentionally with others to  
16 distribute a controlled substance which contained heroine.

17 THE COURT: Mr. Stern, first of all, let's just talk  
18 about that charge. You've discussed with your counsel the  
19 nature of the charge contained in the indictment and you  
20 understand those elements Mr. Rose is talking about?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Obviously Mr. Rose went through this but  
23 I'll just go through it. Do you understand that the maximum  
24 term of imprisonment of 20 years that could be imposed on that  
25 count and there's no minimum term of imprisonment? Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: There's a minimum supervised release term  
4 of three years. Before I go on with that, do you understand  
5 what supervised release is?

6 THE DEFENDANT: I believe so, yes.

7 THE COURT: It's kind of probation.

8 THE DEFENDANT: Probation type thing.

9 THE COURT: So basically you're going to remain under  
10 the supervision of the court for a period of at least three  
11 years and potentially as long as life and you have to  
12 understand that during that period of time if you violate the  
13 conditions of supervised release, which will include things  
14 like not using drugs, not committing other crimes and so  
15 forth, you can go back to jail for another two years. Do you  
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That would be on top of the sentence you  
19 already served.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Sir, I understand -- I've just got to  
22 explain the maximum here. So the maximum fine which you could  
23 be subject to will be \$1 million. The minimum is zero but  
24 somewhere in between there the judge will likely impose a  
25 fine. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: There's a \$100.00 special assessment  
3 which you have to pay. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I want to talk a little bit about the  
6 sentencing guidelines. Has your attorney explained the  
7 sentencing guidelines to you? Have you discussed them?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The most important thing about the  
10 guidelines to know is that they are just that, guidelines.  
11 They're not mandatory on the court although it is required  
12 that the court consider them. So the court has to think about  
13 them but it's not a guarantee. The only guarantee you have is  
14 that 20 year maximum. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The Government has suggested in the Plea  
17 Agreement -- they've done an estimate of 97 to 121 months  
18 although they also indicated that if you took the plea today  
19 they would ask for an additional level, downward departure of  
20 87 to 108 months. That would again be the recommendation  
21 under the guidelines that the Government is calculating. I  
22 don't know if they're right but you understand what their  
23 suggestion is?

24 THE DEFENDANT: Yes, sir.

25 MR. LOSQUADRO: Your Honor, if I just may in that

1 regard. I think it's probably the appropriate moment for me  
2 to comment in that regard.

3 THE COURT: Sure.

4 MR. LOSQUADRO: And that is that Mr. Rose and I have  
5 discussed that Mr. Stern is safety valve eligible.

6 THE COURT: Okay.

7 MR. LOSQUADRO: And of course we've discussed the  
8 fact that there are the conditions pursuant to 3553 and also  
9 that there are conditions that must be met with regard to Mr.  
10 Stern having come forward and met with the Government --  
11 meeting with the Government and conveying certain information.

12 In addition, there is also the possibility of  
13 additional downward modifications that could be made based on  
14 evidence that we know to be peculiar to the certain  
15 circumstances of this case and I discussed with Mr. Rose that  
16 while that was something that Mr. Rose could not include in  
17 this agreement I would place that on the record and he did not  
18 oppose that.

19 THE COURT: Okay.

20 MR. LOSQUADRO: Given that those factors do exist  
21 here.

22 THE COURT: Thank you for covering that. I was going  
23 to actually ask about the safety valve. I thought there might  
24 be an issue.

25 So, Mr. Stern, just so we're clear, your attorney

1 just laid out several reasons why theoretically at least the  
2 range might be lower than 87 to 108 months but that doesn't  
3 modify -- and he may be right. I don't know. Judge Spatt  
4 will look at a number of factors. There will be an  
5 investigation report, a background report on you, there will  
6 be other things that he'll consider, and your attorney may  
7 well be right. Mr. Rose's initial calculation may be right or  
8 maybe everybody is wrong. We don't know but it's important  
9 that you understand what he guidelines are and it is an  
10 important thing. I don't mean to minimize it but I just want  
11 you to understand that if they're wrong and the numbers are  
12 different you can't back out of the plea.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any questions for me about  
17 that? Let me say when I ask that question it's a complicated  
18 area and it's fair if you had a question.

19 THE DEFENDANT: No, I'm okay with it.

20 THE COURT: You're okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Good. All right. So we talked about  
23 supervised release. We talked about the sentence. There's no  
24 restitution here. Do you have any other questions you'd like  
25 to ask me or your attorney about the charges, about anything

1 else that's going on here, sir?

2 THE DEFENDANT: No, sir.

3 THE COURT: So you think you're ready to plead  
4 guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Counsel, is there any legal reason why  
7 the defendant should not plead guilty?

8 MR. LOSQUADRO: No, Your Honor.

9 THE COURT: Are you satisfied -- I'm sorry. Back to  
10 you, Mr. Stern. Are you satisfied with your legal  
11 representation up to this point?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: What is your plea on the lesser included  
14 offense which is included in the indictment?

15 THE DEFENDANT: Guilty, sir.

16 THE COURT: Mr. Rose, am I correct that it's a lesser  
17 included offense?

18 MR. ROSE: That is correct, Your Honor.

19 THE COURT: Just so we're clear about that, sir, a  
20 lesser included offense means it's the same charge, the  
21 narcotics conspiracy but it's just a lesser weight is what  
22 you're pleading guilty to. Do you understand?

23 THE DEFENDANT: Yes, sir. Thank you.

24 THE COURT: All right. So you pled guilty -- are you  
25 making that plea of guilty voluntarily and of your own free



1 will?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anyone threatened you or forced you  
4 to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Other than the agreement with the  
7 Government which we talked about today, has anyone made any  
8 promises that caused you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: That even goes to sentencing, sir.  
11 Understand that your attorney should make an estimate, right,  
12 but nobody can promise you what the guidelines will be and  
13 what the sentence will be. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I assume no one has promised you what  
16 your sentence will be?

17 THE DEFENDANT: No, sir.

18 THE COURT: So, sir, did you as charged in the sole  
19 count in or about and between those dates in 2009, 2012  
20 possess or conspire to possess with intent to distribute a  
21 substance containing heroine?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Sir, in your own words I need you to tell  
24 me what you did to make you guilty of that crime.

25 THE DEFENDANT: I would drive to Brooklyn and

1 purchase heroine from a couple of different individuals and I  
2 would just drive back to my house and give it to my daughter.  
3 That's all. That's all I did.

4 THE COURT: So I assume you were paying for it when  
5 you were buying it --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: -- when you were acquiring it in  
8 Brooklyn. You weren't charging your daughter for it; is that  
9 right?

10 THE DEFENDANT: No, sir. Well, she paid -- I mean  
11 she went through her -- she was in a car accident and she went  
12 through her inheritance out of that and then I was paying for  
13 the rest.

14 THE COURT: Sir, did you use heroine?

15 THE DEFENDANT: No. No, sir.

16 THE COURT: Mr. Rose, I'm just wondering if that's a  
17 sufficient allocution, if there needs to be a consideration  
18 element on the distribution end for it to matter.

19 MR. ROSE: The things that I think that are missing  
20 so far from the allocution are one that he agreed with these  
21 other individuals that are named in the indictment to possess  
22 heroine with the intent to then distribute the heroine to his  
23 daughter and then just not only did he do it in Brooklyn but  
24 he also brought the drugs back to Suffolk County.

25 THE COURT: On the second part, the Suffolk County

1 part isn't critical because it's in the Eastern District but,  
2 sir, did you in fact bring it back -- were you living in  
3 Suffolk at the time?

4 THE DEFENDANT: Yes.

5 THE COURT: Did the individuals who were picking it  
6 up from, did they know you were going to give it to your  
7 daughter?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Anything else?

10 MR. ROSE: Just that he knew that it was illegal to  
11 do.

12 THE COURT: Oh. So I assume you knew that was not --  
13 that was against the law, sir?

14 THE DEFENDANT: Yes, I know it was illegal.

15 THE COURT: Mr. Rose, why don't you outline what the  
16 Government's proof would have been had the defendant proceeded  
17 to trial?

18 MR. ROSE: Certainly, Your Honor. In this case in  
19 addition to the investigation that was conducted by the  
20 agents, the Government would put forth wire tap calls  
21 containing the defendant conspiring with others to pick up  
22 heroine for distribution. The defendant also made post  
23 Miranda admissions to acquiring heroine to distribute to his  
24 daughter. In addition to that, there is drugs that were  
25 recovered from co-defendants at the time of the arrest and the

1 Government would seek that admission as well.

2 THE COURT: Just so we're clear, the Government's  
3 proof would not include distribution to anyone else by this  
4 individual?

5 MR. ROSE: No, just to one person.

6 THE COURT: I just need a moment.

7 The statute we're looking at, the substantive part  
8 of the statute is contained in 846 or -- I guess 846 and then  
9 with reference back to --

10 MR. ROSE: 846 and 841(b)(1)(c).

11 THE COURT: Right. So just give me one minute.

12 [Pause in proceedings.]

13 THE COURT: Let me ask defense counsel. Let me ask  
14 defense counsel. Is there anything else you think we need to  
15 cover before we conclude this?

16 MR. LOSQUADRO: No.

17 THE COURT: Based on the information provided, I find  
18 the defendant is acting voluntarily, fully understands his  
19 rights and the consequences of his plea, and that there is a  
20 factual basis for the plea. I therefore recommend the  
21 acceptance of the guilty plea to the sole count of the  
22 indictment and more specifically the lesser included offense  
23 of the indictment.

24 Mr. Rose, anything else we need to do today?

25 MR. ROSE: No. The Government would just maintain

1 the bond conditions as is.

2 THE COURT: Okay. Any objection to continuing the  
3 bail status as it is?

4 MR. LOSQUADRO: No, Your Honor.

5 THE COURT: So, Mr. Stern, I'm going to leave you on  
6 bail as it's set. Whatever obligations you've been subject to  
7 and complying with you have to continue to comply and most  
8 importantly you have to show up in this court. Right, sir?

9 THE DEFENDANT: Yes, sir. Thank you.

10 THE COURT: Very good. Thank you.

11 MR. ROSE: Thank you, Your Honor.

12 MR. LOSQUADRO: Thank you, Your Honor.

13 (Proceedings concluded at 3:03 p.m.)

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1 I certify that the foregoing is a court transcript  
2 from an electronic sound recording of the proceedings in the  
3 above-entitled matter.

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6 \_\_\_\_\_  
7 Shari Riemer

8 Dated: November 7, 2012  
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